

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY DIGENNARO, Individually, and as Limited
Executrix of the Estate of ALBERT DIGENNARO, on
Behalf of All Distributees,,

Plaintiff,

v.

Civil No.: 09-CV-6551 CJS

LT. GORDON WHITEHAIR, Individually and as a
Police Officer of the Town of Gates,
TOWN OF GATES POLICE DEPARTMENT, and
the TOWN OF GATES,

Defendants.

NOTICE OF CROSS-MOTION TO DISMISS

Nature of Action: 42 U.S.C. § 1983.

Moving Party: Defendants.

Directed To: Plaintiff.

Date and Time: To be scheduled by the Court.

Place: 2310 U.S. Courthouse, 100 State Street, Rochester, NY 14614.

Supporting Papers: Declaration of Michael B. Risman, Esq. dated June 14, 2010. Defendants further incorporate by reference herein the Declaration of Michael B. Risman, Esq. (Doc. No. 35) and Memorandum of Law (Doc. No. 36), both dated May 24, 2010, which were filed with the Court in *DiGennaro v. Town of Gates Police Dep't, et al.*, 07-cv-6426-CJS-MP.

Answering Papers: Defendants believe that additional papers are not necessary as the parties have already briefed the issue raised in this motion in connection with the Plaintiff's Motion to Consolidate and For Leave to Amend which she filed in *DiGennaro v. Town of Gates Police Dep't, et al.*, 07-cv-6426-CJS-MP.

Should the Court issue an order directing the Plaintiff to respond, Defendants respectfully request an opportunity to submit a reply.

Relief Requested:

An order dismissing this action on the grounds that it is duplicative of a prior action filed by the Plaintiff *DiGennaro v. Town of Gates Police Dep't, et al.*, 07-cv-6426-CJS-MP and in violation of the Court's scheduling order, together with the costs of this motion and further relief as this Court deems proper.

Grounds for Relief:

Fed. R. Civ. P. R 12(c) and 16, and as set forth in the accompanying papers.

Dated: June 14, 2010

HODGSON RUSS LLP
Attorneys for Defendants

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